

123 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System  
Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. ER07-940-001

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILINGS

(Issued May 15, 2008)

1. On August 23, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) (together, the regional transmission organizations or RTOs) filed proposed revisions to the Congestion Management Process (CMP) of their Joint Operating Agreement (JOA) in compliance with the directives set forth in the Commission's July 24, 2007 order in this proceeding.<sup>1</sup> In this order, we conditionally accept the proposed changes for filing, effective May 29, 2007.

**I. Background**

2. In the July 24 Order, the Commission conditionally accepted the Midwest ISO's and PJM's May 25, 2007 filing (May 25 Filing) proposing revisions to the CMP of their JOA (a seams management agreement) to change the market flow threshold used to assign North American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) obligations to the Midwest ISO and PJM markets from the then current zero percent level to "the percent required by the NERC TLR standard," in order to implement a 12-month field test that NERC had approved. In the July 24 Order, the Commission, among other things, directed the Midwest ISO and PJM to file, within 30 days of the date of the order, a compliance filing explicitly stating the three percent market flow threshold that NERC had approved for the field test, the other terms and conditions of the 12-month field test, and the effective date on which the Midwest ISO and PJM each planned to

---

<sup>1</sup> *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083 (2007) (July 24 Order).

commence and terminate the field test, if known. If the dates upon which the Midwest ISO would commence and terminate implementing the field test were not known at the time the Midwest ISO and PJM made their compliance filing, the July 24 Order directed the Midwest ISO and PJM to make an additional compliance filing prior to the commencement of the field test specifying the commencement and termination dates of the field test.

## **II. Midwest ISO's and PJM's Proposed Revisions to their JOA**

3. In the August 23, 2007 compliance filing, the Midwest ISO and PJM propose to revise the market flow thresholds in section 4 of the CMP from the previously proposed "percent required per the NERC TLR standard" to the specific "three percent threshold," as directed by the Commission. The Midwest ISO and PJM also set forth other terms and conditions of the 12-month field test: (1) the field test must begin by June 1, 2007, or be postponed until after the summer season; (2) the field test cannot begin until at least one participant is prepared to begin; (3) the field test must terminate no later than December 31, 2008; (4) the NERC Operating Reliability Subcommittee (ORS) must monitor the field test and, if necessary to protect reliability, order the field test to be curtailed; and (5) the NERC Standards Committee standard drafting team will oversee the field test and report monthly on the progress of the test.

4. The Midwest ISO and PJM also state that the commencement date of PJM's field test was May 30, 2007, and that the Midwest ISO commencement date is still unknown. The Midwest ISO also state that once its field test dates were determined, it would make another filing, 20 days prior to the proposed commencement date, to inform the Commission of the start of the Midwest ISO field test, in compliance with the directives of the July 24 Order.

5. On October 12, 2007, the Midwest ISO filed notice with the Commission, pursuant to the directives of the July 24 Order, that it planned to commence its 12-month field test on November 1, 2007, and terminate it on October 31, 2008. The Midwest ISO notes that the terms of the field test are the same as those described in the Midwest ISO's and PJM's August 23 compliance filing, as discussed above.

## **III. Notice of Filing and Responsive Pleadings**

6. Notice of the Midwest ISO and PJM's August 23, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 50,952 (2007), with interventions and protests due on or before September 13, 2007. On November 29, 2007, E.ON U.S., LLC, on behalf of its operating companies Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU), filed a motion to intervene out-of-time and comments. On December 17, 2007, the Midwest ISO and PJM filed a joint

answer to LG&E/KU's intervention out-of-time and comments. On January 2, 2008, LG&E/KU filed an answer in response to the Midwest ISO's and PJM's joint answer.

7. LG&E/KU submit that good cause exists for the Commission to allow their intervention out-of-time, because the issues they discuss were not raised in this docket until the Midwest ISO filed its October 12 notification of its November 1, 2007 field test commencement date. LG&E/KU state that the record in this proceeding before the Commission is not clear whether the Commission anticipates a single 12-month test period, which would run from the date the first participant, PJM, commenced the test and conclude 12 months thereafter, regardless of when additional participants joined the field test, or a 12-month test for each participant, whereby each participant is permitted to establish its own 12-month test period that may or may not run concurrently with other field tests. LG&E/KU clarify that they do not object to the field tests. However, because there is significant potential for costs to shift during the field tests from the RTOs to entities external to the RTOs' markets, such as LG&E/KU, LG&E/KU are concerned that by continuing the field test until October 31, 2008, the Midwest ISO will be extending the field test beyond the 12-month period approved by NERC.

8. LG&E/KU also state that the pleadings in this proceeding do not support the concept of two separate, staggered field tests. Rather, they assert, it appears that a single field test period, which would commence with the first participant and conclude 12 months later, was contemplated all along. They note that the Midwest ISO and PJM, in the May 25 Filing, referred to the field test in the singular. They also note that the parties went on to state that "[t]he 12-month field test should begin before June 1, 2007."<sup>2</sup> LG&E/KU submit that this indicates a *single* 12-month testing period, which one RTO would commence and the other would join later, but both terminating at the same time, rather than two separate 12-month time periods.

9. LG&E/KU state that the NERC conditions for the field test, as outlined in the Midwest ISO's and PJM's compliance filing, also indicate a single 12-month test period, stating that "[t]he field test must begin before June 1, 2007," and that the test could not begin until at least "one participant [was] prepared to begin." LG&E/KU argue that if, as this latter provision indicates, the test itself could not start until the first participant commenced testing, then it seems logical that the test would conclude 12 months later for all participants. Moreover, they assert, although the terms developed by NERC specify that the test must end by December 31, 2008, there is no indication in the terms that each entity would be subject to its own 12-month "clock" for the test period. While the parties noted that the field test would have a staggered start, at no time was it indicated that the termination date would be staggered as well, much less that the 12 month "clock" would

---

<sup>2</sup> LG&E/KU Comments at 11, citing the Midwest ISO's and PJM's May 25 Filing at 6.

commence on the date that the last RTO joined the field test. Thus, according to LG&E/KU, on balance it appears that the parties always contemplated a single field test period, rather than staggered periods.

10. LG&E/KU further state that, in September 2007, the NERC ORS held a meeting to discuss, among other things, the status of the field test. The field test presentation at that meeting concluded with issues raised by the field test, including whether the test should conclude “[o]ne year after the last participant joins or one year after the first participant joins.”<sup>3</sup> LG&E/KU state that, subsequently, on November 27, 2007, the NERC TLR Standards Drafting Team met and discussed the field test.<sup>4</sup> The TLR Standards Drafting Team reports to the NERC Standards Committee, which developed the parameters for the field test and the TLR Standards Drafting Team oversees the field test. At that meeting, according to LG&E/KU, the TLR Standards Drafting Team determined that there was no need to extend the field test at that time, but rather the issue of extension should be examined after the ORS task force responsible for monitoring the field test has had an opportunity to review the data from the field test, and if no extension is granted, the field test would end on June 1 for all participants. LG&E/KU assert that the discussions at these meetings indicated that a single 12-month test period was contemplated from the inception of the proposal.

11. According to LG&E/KU, it is not appropriate at this time to determine whether the initial 12-month test period should be extended beyond June 1, 2008. Rather, they assert that the NERC ORS task force responsible for reviewing field test results should have an opportunity to analyze the data before any extension of the field test period is contemplated. Specifically, LG&E/KU state that as of May 2008, there should be sufficient information for NERC to recommend whether the three percent threshold should go forward, whether additional testing is necessary, or whether another alternative should be examined. LG&E/KU request that the Commission clarify that it approved a single 12-month test period, and that such period shall conclude no later than June 1, 2008, barring any affirmative findings from both NERC and the Commission that the testing period should be continued.

12. In their answer, the Midwest ISO and PJM state that LG&E/KU’s motion to intervene should be rejected because they failed to show good cause for their late intervention. They assert that although LG&E/KU claim to have direct interest in the field tests, LG&E/KU provide no explanation for their failure to intervene when the

---

<sup>3</sup> LG&E/KU Comments at 8.

<sup>4</sup> The TLR Standards Drafting Team reports to the NERC Standards Committee, which developed the parameters for the field test and the TLR Standards Drafting Team oversees the field test.

initial May 25 Filing was made. Furthermore, the Midwest ISO and PJM note that both the May 25 Filing and resulting order conditionally accepting the filing disclosed the Midwest ISO's and PJM's intent to commence their field tests at different times.

13. The Midwest ISO and PJM also assert that LG&E/KU attempt to misrepresent the field test terms and conditions, as approved by the NERC Standards Committee, as only consenting to a single 12-month test period, and mischaracterize the proposed staggered test periods as noncompliant with these conditions. The Midwest ISO and PJM state that nowhere in the adopted terms and conditions did the NERC Standards Committee incorporate a provision stating that only a single 12-month test period could take place. Instead, as the Midwest ISO and PJM note, the terms only stated that a field test must begin by June 1, 2007, or be postponed until after the summer season. They further note that PJM began its field test on May 29, 2007 and the Midwest ISO postponed the test until November 1, 2007, after the summer season. Furthermore, the Midwest ISO and PJM point out that the terms and conditions of the field test require that it must end by December 31, 2008, and that both the Midwest ISO's and PJM's field tests will conclude before December 31, 2008.

14. The Midwest ISO and PJM argue that clarifications or changes to the field tests should be made by the appropriate NERC committees. Specifically, the Midwest ISO notes that it also attended the NERC committee meetings that LG&E/KU describe in their comments, and it is the Midwest ISO's understanding that no firm decisions have been made with regard to a uniform field test closing date and/or extension. Although no final decisions have yet been made regarding the end date for the field tests, the Midwest ISO and PJM assert that it is the relevant NERC committees, specifically the NERC ORS and the TLR Standards Drafting Team, which are in charge of monitoring and collecting data on the field tests, that are best situated to recommend the course of action that should be taken.

15. In their answer to the Midwest ISO's and PJM's joint answer, LG&E/KU agree with the Midwest ISO and PJM that the terms of the field test periods should be left to the NERC committees responsible for monitoring and analyzing the field test. Further, LG&E/KU request that the Commission clarify that the NERC committee process is the appropriate forum for the resolution of this matter, subject to the final review of the Commission, as appropriate.

#### **IV. Discussion**

##### **A. Procedural Issues**

16. Given the issues arising from the Midwest ISO's October 12, 2007 notification and the NERC Committee meetings in September and November, the absence of any

undue prejudice or delay, and their interest in this proceeding, the Commission finds good cause to grant the untimely motion to intervene of LG&E/KU.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's and PJM's answer to LG&E/KU's comments, and LG&E/KU's answer to the Midwest ISO's and PJM's answer, because they have provided information that assisted us in our decision-making process.

### **B. Commission Analysis**

18. While the May 25 Filing indicated that the Midwest ISO and PJM would likely commence implementing the field test at different times, neither the May 25 Filing nor the July 24 Order directly addressed whether each RTO would terminate the field test on the same date. Instead, the July 24 Order directed the RTOs to indicate in their compliance filing(s) the effective date on which each RTO would commence and terminate implementation of the field test. The Commission stated:

[W]e will require Midwest ISO and PJM to file, within 30 days of the date of this order, revisions to their JOA to specify the three percent threshold and other terms and conditions of the 12-month field test, as well as the effective date on which each Applicant RTO will commence and terminate implementation of the field test, if known. Midwest ISO and PJM indicate that PJM was ready to implement the field test on May 29, 2007, but that Midwest ISO was not ready to implement the field test prior to the peak summer season. If the date upon which Midwest ISO will commence and terminate implementing the field test is not known when the RTOs make their compliance filing within 30 days of the date of this order, they are directed to file a further compliance filing specifying that date prior to Midwest ISO's implementation of the field test.<sup>5</sup>

In their August 23, 2007 compliance filing, the RTOs report that PJM commenced the field test on May 30, 2007. In its October 12, 2007 notice, the Midwest ISO indicated that it would commence the 12-month field test on November 1, 2007, and terminate it on October 31, 2008. However, as noted by LG&E/KU and the RTOs, whether the field test should conclude one year after the last participant joins, or one year after the first participant joins, is still being considered by the NERC committees responsible for monitoring and approving the field test. As discussed below, we will defer to NERC's judgment as to how long the field test should continue.

---

<sup>5</sup> July 24 Order at P 27.

19. In Order No. 693, the Commission acknowledged the RTOs' concerns that the current provisions of the CMP may place an undue burden on the RTO regions, and that the seams agreements and reliability standards could conflict if the seams agreements do not allow for reliable outcomes where parties can achieve the relief assigned. Therefore, the Commission decided to neither approve nor remand the regional difference to Reliability Standard IRO-006-3 (the NERC TRL standards) that provided for the RTOs' implementation of the CMP, while the 12 month test is being conducted. The Commission stated that it would reexamine approval of the regional difference as a mandatory and enforceable reliability standard upon the completion of the field test.<sup>6</sup>

20. Similarly, in the July 24 Order, the Commission acknowledged the RTOs' concerns that the current provisions of the CMP may place an undue burden on the RTO regions. The Commission determined that the NERC-approved 12-month field test, subject to conditions, would help the parties to the seams agreements, NERC, and the Commission evaluate the impact and effectiveness of the CMP and determine what, if any, permanent modifications to the seams agreements or the NERC TLR procedures may be appropriate. Among other conditions, the Commission required the Midwest ISO and PJM to file for informational purposes, within 60 days of the completion of the field test, a report of NERC's findings in the course of conducting these investigations.<sup>7</sup> The Commission also stated that it expected the RTOs and other interested parties will evaluate the impacts of the field test on their redispatch obligations under the NERC TLR procedures and the CMP and compile information necessary to determine whether permanent modifications to the seams agreements are appropriate.<sup>8</sup>

21. Thus, the Commission has acknowledged the importance of the field test for the parties to the seams agreements, NERC, and the Commission in addressing reliability and equity issues associated with the treatment of the RTOs' market flows under the TLR procedures. Accordingly, the Commission will allow the field test to continue through the date that NERC determines is necessary for the field test to yield the data needed to serve its intended purpose. The Midwest ISO and PJM are directed to submit a compliance indicating the termination date of the field test within 7 days of NERC's decision as to whether the field test should continue beyond the twelve months of the commencement date of PJM's field test, or May 30, 2008, for either RTO.

---

<sup>6</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416, (2007), FERC Stats. & Regs. ¶ 31,242 at P 989-990 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>7</sup> July 24 Order at P 24.

<sup>8</sup> *Id.* P 25.

The Commission orders:

(A) The Midwest ISO's and PJM's August 23, 2007 and October 12, 2007 compliance filings are hereby conditionally accepted for filing, as discussed in the body of this order.

(B) The Midwest ISO and PJM are directed to submit a compliance filing indicating the termination date of the field test within 7 days of NERC's decision as to whether the field test should continue beyond May 30, 2008 for either RTO, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.